

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Bell Atlantic Telephone Companies) Transmittal Nos. 741, 786
Tariff F.C.C. No. 10) Amended
)
Video Dialtone Service) CC Docket No. 95-145

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REPLY COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION

Adelphia Communications Corporation ("Adelphia"), by its attorneys, hereby submits its reply to the Comments of Bell Atlantic in the above-referenced proceeding.

I. INTRODUCTION

On December 15, 1992, Bell Atlantic applied to the Commission for authority to construct and operate a video dialtone facility in Dover Township, New Jersey. That request was granted by the Commission on July 5, 1994.^{1/} On January 27, 1995, Bell Atlantic filed Transmittal No. 741 proposing rates, terms and conditions for video dialtone service in Dover. The Commission suspended Bell Atlantic's video dialtone tariff for one day and commenced this investigation.^{2/}

The primary issue presented in this investigation is whether Bell Atlantic's tariffed rates violate Section 201 of the Communications Act of 1934, as amended. Specifically, substantial questions of lawfulness have been raised regarding the appropriate allocation of

^{1/} *New Jersey Bell Telephone Co.*, 9 FCC Rcd 3677 (1994).

^{2/} *Bell Atlantic Telephone Cos. (Revisions to Tariff F.C.C. No. 10)*, Order, 10 FCC Rcd 10831 (1995); Order Designating Issues for Investigation, DA 95-1928 (rel. Sept. 8, 1995).

common costs between video and telephone services and the appropriate allocation of overhead to video dialtone. In the course of this investigation, the Commission has built a substantial record which demonstrates that Bell Atlantic will recover the lion's share of video dialtone costs from its captive telephone ratepayers.

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 (the "1996 Act"). Among other provisions, the 1996 Act terminates the effectiveness of the Commission's video dialtone rules. 1996 Act, § 302(b)(3). It does not, however, require the termination of existing dialtone systems. *Id.* In a letter to Bell Atlantic, the Tariff Division asked whether it is necessary to continue this investigation as a result of these provisions of the 1996 Act.^{3/} Not surprisingly, Bell Atlantic asserts that the Commission should terminate the tariff investigation.

The Commission must reject Bell Atlantic's self-serving suggestion. As the party directly affected by the rates under investigation, Adelphia believes there is no legal or policy basis under the 1996 Act for prematurely terminating this investigation. Indeed, as telephone companies will be virtually unrestrained in their ability to construct and operate video facilities under the 1996 Act, the cross-subsidization issues presented in this investigation take on a new sense of urgency. Accordingly, the Commission should complete this tariff investigation and it should do so expeditiously.

^{3/} Letter from Geraldine A. Matise, Chief, Tariff Division to Patricia Koch, Assistant Vice President, External Relations and New Business Issues, Bell Atlantic (February 16, 1996).

II. THE COMMISSION SHOULD RESOLVE EXPEDITIOUSLY THE COST ALLOCATION ISSUES PRESENTED IN THIS TARIFF INVESTIGATION.

Bell Atlantic presents two primary reasons for terminating the investigation. First, Bell Atlantic argues the investigation should be terminated because "the issues designated for investigation are based in part on whether the tariff meets the requirements for video dialtone service" and the rules governing video dialtone have been repealed. Comments of Bell Atlantic at 2. In arguing that the issues designated for investigation are based "in part" on the video dialtone rules, Bell Atlantic concedes, as it must, that there are issues under investigation that are separate from the video dialtone rules.

Specifically, even if Bell Atlantic's offering is "simply a common carrier video transport service, subject to traditional Title II regulation," *id.*, there still exist questions as to whether the rates contained in Bell Atlantic's tariff violate Section 201 of the Act because they fail to satisfy the price cap new services test. As the Commission has stated, the price cap new services test is the applicable standard for all new Title II services.

We decline at this time to amend the new services test specifically for video dialtone services. The Commission currently has generally applicable rules in place that specify the cost support that must be submitted with any new service tariff, including a video dialtone tariff.^{4/}

Moreover, Section 651(a)(2) of the Act specifically provides that LECs can provide video transport, but not programming, on a common carrier basis subject to Title II.^{5/} Because

^{4/} *Telephone Company-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244, 343-44 (1994)

^{5/} Accordingly, Bell Atlantic's pending request for its affiliate to provide video programming on the Dover system is moot. If Bell Atlantic wants to provide video

Section 201 and the price cap new services test would apply to such an offering, there is a continuing need to prescribe cost allocation principles to ensure that common carriers offering video transport do not cross-subsidize those facilities at the expense of captive telephone ratepayers. Accordingly, the 1996 Act provides no reason to terminate this investigation.

Second, Bell Atlantic argues that there is no need to continue this investigation because "open video systems (OVS)," the successor to video dialtone, will not be subject to tariffing requirements and therefore it would not be a productive use of Commission resources to complete the investigation. Bell Atlantic at 3-4. However, the Commission specifically acknowledges in its Notice of Proposed Rulemaking regarding OVS that the allocation of costs between video and telephone services remains an unresolved issue:

We expect that the specific cost allocation requirements of Part 64 between telephone company operations and open video system operations will be addressed in a separate rulemaking, which the Commission will initiate shortly.^{6/}

While the *OVS Notice* defers the specific question of how to allocate costs between video and telephone services, it suggests that the general approach advocated by Adelphia for the past two years is the correct approach. Specifically, the Commission has stated that OVS costs will be separated from regulated telephone costs pursuant to the requirements of Part 64

programming directly to subscribers, it must do so as a Title VI cable operator or it must wait until the Commission establishes rules governing open video systems.

^{6/} *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, FCC 96-99 at ¶ 70, n.82 (rel. March 11, 1996) ("*OVS Notice*").

of the Commission's rules.^{7/} Adelphia has proposed precisely this approach to the Commission in connection with video dialtone.^{8/}

Accordingly, the cost allocation issues presented by the Dover tariff investigation have not lost any of their significance as a result of the 1996 Act. The Commission has wrestled with these issues for over three years and has compiled an extensive record in this investigation. To terminate the investigation prematurely and start from scratch in a rulemaking proceeding would be a colossal waste of resources and potentially would enable Bell Atlantic to subsidize its entire Dover facility at the expense of captive telephone ratepayers.^{9/} The Commission has sought to avoid this result with regard to video dialtone and it should not ignore its continuing responsibility to telephone ratepayers as telephone companies convert their facilities to OVS under the 1996 Act.

^{7/} "The Part 64 rules would apply here to require the telephone company to segregate its cost of providing regulated telecommunications services from its cost of providing an unregulated service (i.e., the provision of video programming over an open video system." *OVS Notice* at ¶ 70.

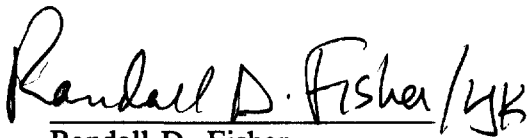
^{8/} *Bell Atlantic Telephone Cos. (Revisions to Tariff F.C.C. No. 10)*, Petition to Reject of Adelphia Communications Corporation, *et al.* (February 21, 1995).

^{9/} If the Commission elects not to complete this investigation and to resolve these questions in a future rulemaking, it must clarify the appropriate treatment of costs incurred by Bell Atlantic prior to the effective date of the OVS rules. According to Bell Atlantic's Video Dialtone Report for the 3rd Quarter of 1995, all the shared costs of the Dover facility were being booked to plant under construction. Bell Atlantic's claim that its former video dialtone service is now "simply a common carrier video transport service" should not give it free reign to assign all these costs to regulated Title II accounts. Rather, the Commission must ensure that all the costs of the Dover facility are accounted for pursuant to the Commission's Part 64 rules and it should require Bell Atlantic to continue keeping subsidiary accounting records to achieve this objective.

III. CONCLUSION

For all reasons described herein, Adelphia respectfully requests that the Commission complete this tariff investigation and prescribe principles to govern the allocation of costs between video and telephone services.

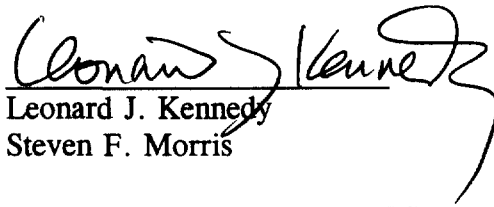
Respectfully submitted,

Handwritten signature of Randall D. Fisher in cursive, followed by a forward slash and the initials 'YK'.

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March 18, 1996

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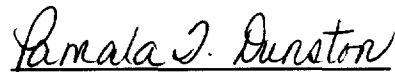
CERTIFICATE OF SERVICE

I, Pamala T. Dunston, hereby certify that on this 18th day of March, 1996 I caused a copy of the Reply Comments of Adelphia Communications, Corporation to be served by pre-paid first class mail or delivery to the following:

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